

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(*Criminal Appellate Jurisdiction*)

Criminal Appeal
Case No. 24/2407 SC/CRMA

BETWEEN: Sebas Peter
Appellant

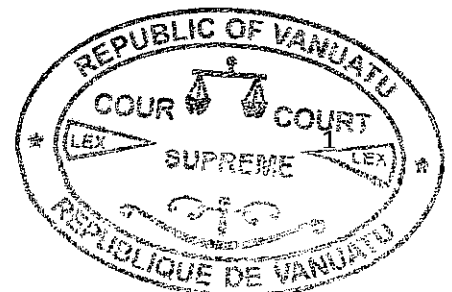
AND: Public Prosecutor
Respondent

Date of Hearing: 10 October 2024
Before: Justice V.M. Trief
In Attendance: Appellant – Mrs P.K. Malites
Respondent – Mr J. Aru
Date of Decision: 14 October 2024

JUDGMENT

A. Introduction

1. On 7 February 2024, the Appellant Sebas Peter pleaded guilty to two counts of malicious damage to property contrary to s 133 of the *Penal Code* [CAP 135], one count of unlawfully entering a non-dwelling house contrary to subs. 143(1) of the *Penal Code* and one count of theft contrary to para. 125 (a) and s. 122 of the *Penal Code*.
2. The maximum sentences prescribed in the *Penal Code* are:
 - a) Theft -12 years imprisonment;
 - b) Unlawfully entering a non-dwelling house - 10 years imprisonment; and



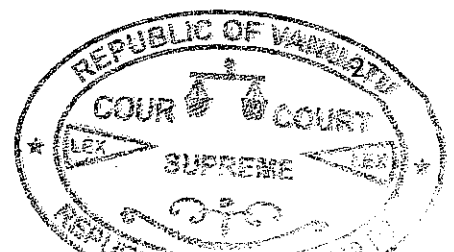
- c) Malicious damage to property – 1 year imprisonment and/or VT5,000 fine.
3. On 16 April 2024, Mr Peter and his co-offender William Amos were convicted of all four charges and sentenced by the Magistrates' Court to 18 months and 2 weeks imprisonment.
 4. Mr Amos appealed his sentences. The appeal was allowed, the sentence imposed by the Magistrate quashed and Mr Amos was re-sentenced to 12 months 2 weeks imprisonment, suspended for 2 years, by Justice MacKenzie in Amos v Public Prosecutor [2024] VUSC 199.
 5. Mr Peter filed his appeal in the present matter out of time. His ground of appeal is that the sentences were manifestly excessive as: (i) the Magistrate applied an inadequate discount for Mr Peter's youth and immaturity as he was aged 17 at the time of the offending; and (ii) the Magistrate erred when she suspended the sentences for 2 years when 1 year was appropriate.
 6. Mr Peter applied for leave to file his appeal out of time. The Prosecution accepted that given the outcome of Mr Amos' appeal, the merits of the case strongly favour Mr Peter being given leave to appeal against his sentences. Accordingly, I granted leave.

B. Consideration

7. I adopt the approach taken by Justice MacKenzie in Amos v Public Prosecutor [2024] VUSC 199 and agree with her findings about the approach of the Magistrate in the Sentence dated 16 April 2024 including the following:

The facts

7. *On 6 November 2023, the appellant and his co offender Mr Peter met at Mr Peter's home. They travelled by bus to Club 21, and then walked towards Au Bon Marche Nambatu. At about 10 pm they arrived at the back of the Au Bon Marche Nambatu, and monitored the premises to see if there were any security personnel on the premises. Satisfying themselves that there were no security personnel, the appellant and Mr Peter gained access to the roof.*
8. *Once on the roof, the appellant and Mr Peter used a pair of pliers in their possession to remove metal roofing screws which held the metal roofing sheet in place. They gained entry into the building and located the offices. Once they had done so, they exited the building via the roof and bent the metal roofing sheet back into place. It was temporarily in place.*
9. *On 8 November 2023, the appellant and Mr Peter decided to steal items from the Au Bon Marche Nambatu. Again, they travelled by bus to Club 21 and then walked towards Au Bon Marche Nambatu. At about 9 pm they arrived at the back of the supermarket. Around 10.30 pm, seeing that the security officer was out of sight, they got onto the roof via the*



shipping container. They gained access to the building in the same way as they did on 6 November.

10. In gaining entry to the building, the appellant and Mr Peter broke 2 ceiling tiles and then landed on the floor. They then located the alarm system and CCTV system. They damaged these systems by cutting the electrical wiring with a knife in their possession. They were a Swann security system and a swann camera security. The appellant and Mr Peter unsuccessfully searched for cash stored in a safe in the office. They searched other offices and in doing so, caused damage to two office doors and two office drawers.
11. The appellant and Mr Peter took a number of items;
 - a. 1 POS market network attached storage accessory
 - b. 500 euro cash and 100 CFP France, both valued at VT 150,000
 - c. 1 bottle Pierre Debrunet wine
 - d. 1 bottle of black eagle
 - e. 1 bottle golden circle orange juice
 - f. 2 cartons Jack Daniels whiskey
 - g. 6 bottles apple juice
 - h. 1 cross packet of cigarettes
 - i. 1 pair of binoculars
 - j. Cash valued at VT 14,000
12. The appellant was cautioned on 25 November 2023 and made voluntary admissions that he broke into the ABM on 6 November 2023 and caused damage to the metal roof using a pair of pliers, and that he went in to locate the office. That on 8 November 2023 he gained entry to the ABM using the same entrance as on 6 November, and caused damage to the alarm and camera system. He admitted stealing multiple items.

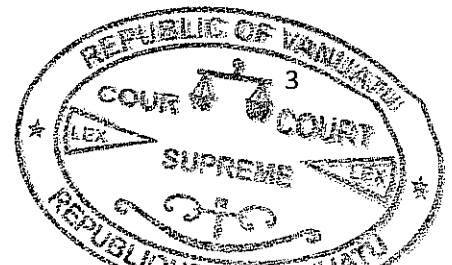
The sentence imposed in the Magistrates' Court

13. The Magistrate took into account the maximum penalties for each offence, and established a global starting point of 2 years imprisonment for the four charges...

...

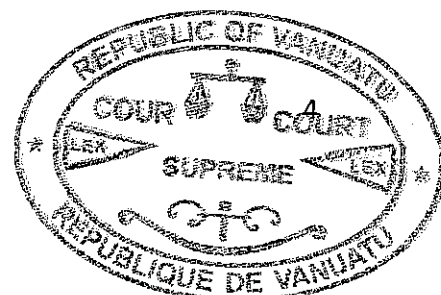
Appeal Ground One: The End Sentence

28. It is not in dispute that the Magistrate made an error in reaching an end sentence of 18 months 2 weeks imprisonment. How the Magistrate reached such an end sentence is confusing.
29. Firstly, the Magistrate adopted a starting point of 2 years imprisonment, and then turned to consider a guilty plea credit and a discount for personal factors. She said the guilty plea discount was one third, and applied a discount of 3 months for personal factors relating to a lack of previous convictions and compliance with bail conditions. The final reduction was 14 days to reflect that the appellant has spent 7 days in custody. No challenge is made to the sufficiency of the reductions indicated by the Magistrate. However, the



Magistrate did not apply the indicated discounts. If she had, the end sentence would have been 12 months 2 weeks imprisonment.

30. *But then later in the sentencing judgment, the Magistrate appears to re visit the sentence calculation (at 18 and 19). This is because she said that the appellant was sentenced to 20 months imprisonment, and then deducted 2 months and 14 days from the sentence (14 days for time spent in custody and 2 months for a lack of prior history) to arrive at an end sentence of 18 months and 2 weeks imprisonment. This is, on the face of it, inconsistent with the starting point and reductions earlier indicated.*
 31. *As the Magistrate did not in fact apply the discounts as indicated and then appears to have adopted a different approach to assessing the end sentence, without explanation later in the sentencing, the end sentence was in error.*
 32. *Because it was in error, I will consider afresh the end sentence...*
8. As set out in Amos v Public Prosecutor [2024] VUSC 199, Mr Peter's end sentences were manifestly excessive as the Magistrate followed the correct sentencing approach but did not apply the indicated discounts correctly. Had she done so, Mr Peter's end sentences would have been, at the most, 12 months 2 weeks imprisonment.
 9. Accordingly, the sentences imposed by the Magistrate must be quashed and this Court re-sentence Mr Peter.
 10. The Magistrate applied a discount of 3 months for Mr Peter's personal factors. However, given his age of 17 years at the time of the offending and also the difference in age with his co-offender Mr Amos (who was aged 21 years at the time of the offending), I agree that the discount applied for Mr Peter's personal factors including his youth and immaturity was inadequate. I apply a discount of 6 months for Mr Peter's personal factors.
 11. For the reasons given, Mr Peter is re-sentenced to the following end sentences:
 - i) Theft (1 charge) 9 months 2 weeks imprisonment;
 - ii) Unlawfully entering a non-dwelling house (1 charge) 9 months 2 weeks imprisonment; and
 - iii) Malicious damage to property (2 charges) 5 months imprisonment.
 12. In terms of the factors in s. 57 of the *Penal Code*, the offending was serious. On the other hand, Mr Peter pleaded guilty at an early opportunity and is young and immature. He had no prior criminal history and complied with his bail conditions. He has good prospects of rehabilitation. These factors point towards the sentences being suspended. Accordingly, the sentences are suspended for 1 year. Mr Peter is warned that if he is convicted of any offence during that 1-year period, that he will be



taken into custody and serve the sentences of imprisonment, in addition to the penalty for the further offending.

C. Result and Decision

13. The appeal is **allowed**.
14. Mr Peter's sentences imposed by the Magistrate in PI Case No. 3255 of 2023 are **quashed**.
15. Mr Peter is re-sentenced to the following end sentences:
 - i) Theft (1 charge) 9 months 2 weeks imprisonment;
 - ii) Unlawfully entering a non-dwelling house (1 charge) 9 months 2 weeks imprisonment; and
 - iii) Malicious damage to property (2 charges) 5 months imprisonment.
16. The end sentences are suspended for 1 year.

**DATED at Port Vila this 14th day of October 2024
BY THE COURT**


Justice Viran Molisa Trief

